

STATE OF SOUTH CAROLINA DEFERRED COMPENSATION COMMISSION
INVESTMENT CONSULTANT REQUEST FOR PROPOSAL
457 AND 401(K) DEFINED CONTRIBUTION PLANS

Open letter to responders

You have received the enclosed RFP for investment consultant services, either:

1. At your specific request, or
2. By virtue of recommendation, or
3. By way of listing on a database of investment consultants.

The following comments may help you make your business decision regarding any response. In an effort to disclose, as fully as possible, the intent of the South Carolina Deferred Compensation Commission (SCDCC) with respect to our principles of review of proposals:

1. The SCDCC has agreed to the principle of avoiding potential conflict of interest in either fact or appearance. To that end we will require that the selected consultant cannot be a candidate for any investment activity, but will serve the SCDCC as consultant only. Furthermore, we require all responses to disclose any and all investment managers for whom the bidder serves as an investment consultant.
2. The SCDCC will place high value on the ability of the consultant to serve as a full-fledged team member in our state's effort to provide quality investment products to participants in the SCDCC programs.

Thank you for your interest. I hope this expression of our expectations will be helpful as you decide whether or not to respond to the enclosed Request for Proposal.

Respectfully,



Peggy G. Boykin, CPA
Chairman

South Carolina Deferred Compensation Commission

ADMINISTRATIVE INFORMATION

Contact Person

The contact person, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful offeror.

**South Carolina Deferred Compensation Program
Attention: Dianne Poston
202 Arbor Lake Drive
Columbia, SC 29223
dposton@retirement.sc.gov
(803) 737-6947 (facsimile)**

Written Questions and Answers

In an effort to clarify any issues in this RFP, the SCDCC will respond only to questions that are presented in writing and received by facsimile or e-mail transmission. Questions should be addressed to the contact person. The SCDCC will consolidate all questions and its answers into a single Q&A document. The Q&A document will be made available on the South Carolina Deferred Compensation Program's (SCDCP) Web site at <http://scrs.csplans.com>. **Questions must be received by 3:30 p.m. EDT, August 7, 2006. Responses will be provided on August 10, 2006.**

Schedule

The following schedule has been set for informational and planning purposes; however, the SCDCC reserves the right to change the dates:

| | |
|----------------------------|--------------------|
| RFP Issuance | July 27, 2006 |
| Submission of Questions | August 7, 2006 |
| Response to Questions | August 10, 2006 |
| Proposal Responses Due | August 17, 2006 |
| Evaluation of Proposals | September 13, 2006 |
| Finalist Presentations | October 3, 2006 |
| Effective Date of Contract | November 1, 2006 |

Submission of Proposals

The SCDCC must receive the offeror's proposal before 3:30 p.m., EDT, on August 17, 2006. Offerors should send proposals to the contact person above.

Any proposal received after the deadline will be rejected and returned unopened to the offeror. Offerors mailing proposals must allow ample time for delivery. It is the offeror's responsibility to ensure that the proposal is received prior to the deadline. Post marking by the due date will not substitute for actual receipt of the proposal.

The costs of preparation and delivery of the proposal are solely the responsibility of the offeror.

The SCDCC reserves the right to waive or permit cure of nonmaterial variances in a bid proposal, if in the SCDCC's judgment, it is in the SCDCC's best interest to do so. No such waiver or permission to cure shall modify the RFP requirements or excuse the offeror from full compliance with the RFP specifications or other contract requirements if the offeror is awarded the contract.

All timely proposals become the property of the SCDCC. Upon final selection of a consultant and execution of a contract, all proposals will be considered to be public records and shall be available for reviewing and reproduction as the law provides.

The SCDCC reserves the right to contact an offeror after the submission for the purpose of clarifying a proposal to ensure mutual understanding.

Format of Proposals

These instructions prescribe the format of the proposal. They are designed to facilitate a uniform review process. Failure to adhere to the proposal format may result in the disqualification of the proposal.

- (1) The proposal shall be typewritten on 8.5" x 11" paper.
- (2) One (1) original, executed paper copy of the proposal along with ten (10) duplicate paper copies of the completed proposal shall be timely submitted to the contact person. In addition, one (1) copy of an electronic version of the proposal in either Microsoft Word or "pdf" format shall be provided to the contract person on compact disc. A proposal is incomplete until both the paper and electronic copies are submitted.
- (3) Proposals shall not contain promotional or display materials.
- (4) Attachments shall be referenced in the proposal.

PART I.

GENERAL INFORMATION

The SCDCC currently oversees the only 457 and 401(k) programs available by statute to state and local government employees. CitiStreet is the current record keeper and administrator for both programs.

The plan currently holds \$2.3 billion in assets. Approximately \$1.5 billion is in the 401(k) program and \$831 million is in the 457 program. There are approximately 216,000 state, public, and local government subdivision employees eligible to participate, 700 payroll centers, and 110,000 participant accounts.

Each plan offers the same investment products:

Guaranteed Certificates (84-month)

Stable Value Fund (Deutsche Asset Management)

PIMCO Total Return Fund

Oppenheimer Capital Income Fund A

Dodge & Cox Stock Fund

Vanguard Institutional Index Fund

American Century Ultra Investors Fund

T. Rowe Price Mid-Cap Value Fund

Munder Mid-Cap Core Growth Fund Y

Brazos Micro Cap Growth Portfolio Fund

EuroPacific Growth Fund

Fidelity Diversified International Fund

SSgA Income Fund (State Street Global Advisors)

SSgA 2010 Fund

SSgA 2020 Fund

SSgA 2030 Fund

SSgA 2040 Fund

PART II.

SCOPE OF SERVICES

2.1.0 Investment Policy Review and Update

Review the Investment Policy on a periodic basis or as requested by the SCDCC and revise as necessary.

See current policy (attachment A).

2.2.0 Fund Performance Evaluation

Review and evaluate current investment products and monitor compliance with the Investment Policy on a quarterly basis or more often as requested by the SCDCC. See example (attachment B).

2.3.0 Fund Replacement

At least annually, review fund universe and recommend replacement funds and asset classes when requested to do so by the SCDCC and in compliance with the Investment Policy.

2.4.0 Request for Proposal Services

Prepare recordkeeping, administration, actuarial and other Requests for Proposals as required by the SCDCC.

2.5.0 Attend SCDCC Meetings

2.6.0 Provide Annual Fiduciary Education/Training on Topic Determined by the SCDCC.

2.7.0 Other Services as Requested

2.8.0 General Consulting

PART III.

PROPOSAL CONTENTS AND AWARD CRITERIA

So that the SCDCC can consider your proposal, submit the following information **in the listed format:**

3.1.0 Transmittal Letter

An individual authorized to bind the offeror shall sign the transmittal letter. Include the offeror's mailing address, electronic mail address, fax number and phone number.

The offeror must certify in the transmittal letter that the contents of the proposal are true and accurate, and that the offeror has not made any knowingly false statements in its proposal.

3.2.0 Proposal Format

Proposals must be organized in the exact order in which the requirements are presented in the RFP. All pages must be numbered. Each paragraph in the proposal must correspond to and reference the paragraph number in the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter/number and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the offeror must repeat the section number and subsection at the top of the next page. The proposal must also contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material.

3.3.0 Offeror Background

- 3.3.1** Provide a brief history of the offeror including year of inception, ownership, affiliated and subsidiary companies and relationships, joint ventures, and any business partners.
- 3.3.2** Describe all significant developments affecting offeror in the last three years, such as changes in ownership, restructuring, personnel reorganization, and philosophy. Disclose any known or contemplated future changes in offeror's organization.
- 3.3.3** Provide the address of offeror's corporate office and a description of the offeror, including number and location of offices, number of professional consultants, and scope of services offered. Also indicate which office(s) would service the SCDCC.
- 3.3.4** Provide an organizational chart of offeror showing functions, positions, and titles of all key personnel involved in consulting services. Provide a brief description of the relationship between each component and the consultant(s) who would service the SCDCC.
- 3.3.5** Within the last five (5) years, has offeror or an officer or principal been involved in litigation or other legal proceedings relating to your investment consulting assignments? If so, please provide an explanation and indicate the current status or disposition.
- 3.3.6** Has offeror ever been censured by any regulatory body? If so, please describe the situation.

3.3.7 Provide evidence of professional liability insurance.

3.3.8 Provide the SCDCC with a complete copy of your latest Form ADV as it is on file with the Securities and Exchange Commission.

3.4.0 **Conflicts of Interest**

Explain in detail any potential for conflict of interest that may be created by offeror providing services to the SCDCC. Include all current relationships or any presence of offeror in South Carolina during the last five years.

3.5.0 **Consulting Team**

3.5.1 Provide name, title, home office location, and biography of the key individual(s) who would be directly responsible for providing consulting services to the SCDCC, including what year the individual joined offeror, current responsibilities, areas of expertise, experience, education, professional designations and memberships, and relevant publications and presentations. Detail their roles and the scope of their involvement for this assignment. Indicate client load for each member of the team, and who would be the team leader and direct contact for the SCDCC.

3.5.2 Please describe your team's experience with work performed for other deferred compensation programs similar in size and complexity to the SCDCC.

3.5.3 State whether the individuals assigned to the work have any responsibilities other than providing consulting services, and if so, specify such responsibilities.

3.6.0 **Clients**

3.6.1 For all consulting clients, provide the following by category: state pension plans, other public pension funds, corporate pension funds, and others.

- (1) Total number of clients;
- (2) Range of fund sizes serviced;
- (3) Number of clients in these asset ranges:

- <\$200 million;
 - \$.20-\$1 billion;
 - \$1 -\$10 billion;
 - >\$10 billion.

3.6.2 Provide a list of up to five (5) current public fund consulting clients with assets greater than \$1 billion. Include name, contact person, telephone number, asset value, number of years they have been a client of the offeror,

and the services provided. The SCDCC may contact any of these clients as references. If you require advance notice of the SCDCCs' intent to make inquiries, please so indicate.

- 3.6.3** State the number of accounts, and value of assets represented in those accounts, lost during the last five (5) years. Provide name, contact person, telephone number, and asset values of all terminated client relationships in the last three (3) years, with the reason for termination. The SCDCC may contact any of these clients as references.

3.7.0 Client Services

- 3.7.1** Describe any relevant educational seminars sponsored and held by offeror that are open to clients.
- 3.7.2** Indicate offeror's level of involvement in any public fund/governmental professional organizations.

PART IV

SPECIAL INSTRUCTIONS

4.1.0 Discussion/Negotiation

By submission of a proposal, the offeror agrees that during the period following issuance of a proposal and prior to final award of a contract, the offeror shall not discuss this procurement with any party except those parties specifically designated in this solicitation. Offeror shall not attempt to discuss with or attempt to negotiate with the SCDCC any aspect of the procurement.

4.2.0 Amendments

- 4.2.1** VERBAL COMMENTS OR DISCUSSIONS BY THE SCDCC STAFF RELATIVE TO THIS SOLICITATION CANNOT ADD, DELETE OR MODIFY ANY WRITTEN PROVISION. ANY ALTERATION MUST BE IN THE FORM OF A WRITTEN AMENDMENT TO ALL OFFERORS.

- 4.2.2** If it becomes necessary to revise any part of the RFP, an amendment will be provided to all eligible offerors.

4.3.0 Evaluation of Proposals

The SCDCC intends to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. The support staff of the SCDCC will evaluate proposals received in response to this RFP and make a recommendation to the SCDCC. The SCDCC will make the final decision as to which offeror's proposal will be accepted.

4.4.0 Finalists' Presentations

If the SCDCC requests presentations by finalists, each finalist will have a scheduled time to meet with the SCDCC. It is highly recommended that the lead consultant be present at the finalist's presentation. Such presentations provide an opportunity for the offerors to clarify their proposals and to ensure a thorough understanding by the SCDCC.

4.5.0 Award

An award resulting from this request shall be made to the responsive and responsible offeror whose proposal is determined to be most advantageous to the South Carolina Deferred Compensation Program (SCDCP), taking into consideration price, when required, and the evaluation factors set forth herein; however, the right is reserved to reject any and all proposals received and in all cases, the SCDCC will be the sole judge as to whether an offeror's proposal has or has not satisfactorily met the requirements of this RFP.

4.6.0 Submitting Privileged/Confidential and Trade Secret Information

All offerors must visibly mark each part of their proposal which they consider to contain privileged and confidential information, or Trade Secrets, as set forth herein, and include a separate, redacted copy of the proposal.

4.6.1 Overview

Under the South Carolina Freedom of Information Act (FOIA), certain documents an offeror submits to the SCDCC may be subject to public disclosure. All references are to the South Carolina Code of Laws, which is available on the Internet at:

<http://www.scstatehouse.net/html-pages/research.html>. Offerors are urged to become familiar with FOIA (Title 30, Chapter 4 of the Code) and the Trade Secrets Act (Title 39, Chapter 8).

Privileged and confidential information as defined in S.C. Code Ann. § 11-35-410 is "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information." The examples of such information provided in the statute are:

- (1) Customer lists;
- (2) Design concepts, including methods and procedures; and
- (3) Biographical data on key employees of the bidder.

4.6.2 Instructions

For every document offeror submits in response to or with regard to this solicitation or request, offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that offeror contends contains information that is exempt from public disclosure because it is either

(a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential as that phrase is defined in S.C. Code Ann. §11-35-410.

For every document offeror submits in response to or with regard to this solicitation or request, offeror must separately mark with the words “TRADE SECRET” every page, or portion thereof, that offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act.

All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential or trade secret! If your response, or any part thereof, is improperly marked as confidential or trade secret, the SCDCC may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page.

NOTE: MARKING YOUR ENTIRE PROPOSAL CONFIDENTIAL/PROPRIETARY IS NOT IN CONFORMANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT.

4.6.3 Agreement to release

By submitting a response or proposal to this solicitation or request, offeror (1) consents to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked “TRADE SECRET” or “CONFIDENTIAL,” (2) agrees that any information not marked, as required by these instructions, as a “TRADE SECRET” is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the SCDCC will detrimentally rely on offeror’s marking of documents, as required by these instructions, as being either “CONFIDENTIAL” or “TRADE SECRET.” By submitting a response or proposal, offeror agrees to defend, indemnify and hold harmless the State of South Carolina, the SCDCC, and their officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from the SCDCC withholding information that offeror marked as “CONFIDENTIAL” or “TRADE SECRET.”

4.7.0 Right of Noncommitment or Rejection

This solicitation does not commit the SCDCC to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of

goods or services. The SCDCC reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this proposal if it is in the best interest of the SCDCC to do so.

4.8.0 Cost

Cost submitted with proposal shall be firm for a period of at least ninety (90) days from the date the RFP response is due.

4.9.0 Discussion With Responsive Offerors

Discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals in the SCDCC's sole judgment need clarification, shall be accorded such an opportunity.

Except as otherwise provided herein, current service providers who may consider responding to this RFP or current service providers who are responsive offerors must limit their contact for business transactions to the SCDCC, or their respective employees with whom they ordinarily interact and must avoid direct contact with such persons during this proposal period, other than that which might occur at regularly scheduled meetings or in carrying out the performance of their duties under any current contract.

PART V.

TERM OF AGREEMENT AND TERMINATION

5.1.0 Duration

This Agreement shall be for a period commencing on the Effective Date and continuing for three (3) full years. Extensions may be less than, but will not exceed, two (2) additional one (1) year periods. If the Consultant elects not to extend on the anniversary date, the Consultant must notify the Client of its intention, in writing, at least ninety (90) Business Days prior to the anniversary date.

5.2.0 Termination

This Agreement may be terminated for convenience by the Client as of the end of any month upon not less than thirty (30) Business Days written notice; provided, however, that the Client may, in its sole discretion, and upon written notice to the Consultant, terminate this Agreement immediately if the Consultant is in breach of any term, condition, standard, obligation, or warranty in the Contract Documents and fails to remedy such breach within ten (10) Business Days after receipt of notice thereof. Upon termination of this Agreement, the Consultant shall provide the Client with the quarterly investment report required by the Scope of Services for the period from the date of the last quarterly investment report through the effective date of termination of this Agreement.

5.3.0 Terms Upon Renewal

All terms, conditions, and provisions of this Agreement, including the Fee Schedule, shall remain in full force and effect during any renewal or extension.

5.4.0 Orderly Transfer of Materials

Upon termination of this Agreement for any reason, (i) the Consultant, immediately upon demand, shall provide to the Client all of Client's properties, including, but not limited to, all materials provided to the Consultant by, for the benefit of, or on behalf of, the Client and (ii) the Client shall pay the Consultant for services rendered and expenses incurred prior to the termination date. The SCDCC shall retain ownership of all data and materials produced under any contract resulting from this RFP. No material so produced shall be released to third parties without the expressed permission of the SCDCC.

PART VI.

FEES

6.1.0 Provide in detail, the fees the offeror would charge for investment consulting services. Quote all fees in hard dollars including all expenses (travel expenses included).

6.2.0 Projects under this contract will be on an ad hoc basis and costed on an hourly basis unless otherwise specified.

Please give a composite hourly rate based on the type of activities previously described in Part II. This single rate should represent a weighted average of:

| | | | | | |
|-----------------------|---|---|---|---|--------------|
| Professional Services | = | Project Director Analyst Clerical | } | = | \$_____ Hour |
|-----------------------|---|---|---|---|--------------|

PART VII.

TERMS OF PAYMENT

7.1.0 Payment

Unless otherwise specified herein, within thirty (30) Business Days after the end of each Fiscal Quarter, the Consultant shall submit a bill or invoice to the SCDCC for payment of Consultant's fees.

7.2.0 Proration of Payment

If the first quarter during the term of this Agreement represents a portion of a Fiscal Quarter, the Consultant's fee for that quarter will be billed as soon as practical in that quarter and shall be prorated for the remainder of the Fiscal Quarter. In the event this

Agreement is terminated before the end of a Fiscal Quarter, the Consultant's fee, including any minimum monthly fee, shall be prorated for the final Fiscal Quarter of services rendered.

PART VIII.

CONFIDENTIALITY

8.1.0 Confidential Relationship

8.1.1 All non-public information provided by the Client to the Consultant shall be considered confidential. All recommendations, advice, and other work product of the Consultant regarding the Client's investments or the Client's relationship with Consultant shall be considered confidential. Consultant agrees to take all necessary steps to safeguard confidential material. The Consultant agrees not to release any confidential information without the express written consent of the Client and further agrees not to use any confidential information for any other purpose other than performance under this contract; provided, however, the Consultant may disclose or communicate confidential information to a proper party as is necessary to carry out the purposes of this Agreement or as may be required by law.

8.1.2 In the event Consultant receives a subpoena or any validly issued judicial process requesting confidential information or a request for disclosure pursuant to the South Carolina Freedom of Information Act, Consultant shall promptly notify the Client in order to allow the Client to challenge such legal process or request for information before disclosure by Consultant. Further, Consultant shall release such information only (a) in accordance with applicable laws, (b) upon the Client's written consent which shall not be unreasonably withheld, or (c) upon Consultant's receipt of a Court Order or other legal process requiring release.

8.2.0 Approval of Publicity Releases

The Consultant shall not include the Client's name in its published list of clients without prior approval of the Client. With regard to news releases, only (a) the name of the Client, and (b) the type and duration of this Agreement may be disclosed, and then only with prior approval of the Client. The Consultant agrees not to publish or cite in any form any comments or quotes from any of the Client's staff without the prior written approval of the Client. Consultant further agrees not to refer to award of this Agreement in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the Client.

8.3.0 Proprietary Information

Any and all reports, analyses, and data, whether statistical or otherwise, prepared specifically and exclusively for the Client by the Consultant pursuant to this Agreement shall become the property of the Client and may be used for such

purposes as the Client shall deem appropriate unless such use is otherwise prohibited by this Agreement. Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that the Consultant shall retain all of its rights in methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and expertise possessed by the Consultant prior to, or acquired by the Consultant during the performance of this Agreement and the Consultant shall not be restricted in any way with respect thereof. If the Consultant specifically identifies information as trade secrets or proprietary information, the Client agrees that it shall not disclose information so identified with any other person without the prior written approval of the Consultant, except in connection with any governmental or judicial proceeding or inquiry or as may be required by applicable law including, but not limited to, the South Carolina Freedom of Information Act. The Consultant agrees that it will not unreasonably withhold its approval in relation to an audit or other inquiry. In the event the Client receives a subpoena, or any validly issued judicial process requesting such information, the Client shall promptly notify the Consultant to allow the Consultant to challenge such legal process.

PART IX.

REPRESENTATIONS AND WARRANTIES

The Consultant hereby represents, warrants, and covenants as follows:

- 9.1.0** The Consultant possesses a high degree of skill and experience as an investment advisor; that it maintains and will maintain a professional staff and facilities to perform the services required by this Agreement.
- 9.2.0** The Consultant is presently registered and, to its knowledge, is in good standing as an investment advisor with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and, shall remain so registered and in good standing for the duration of this Agreement. Consultant shall notify Client immediately upon receipt of notice that it is not in good standing as an investment advisor with the Securities and Exchange Commission. Failure to comply with the terms of this provision shall constitute a material breach of this contract.
- 9.3.0** The Consultant has disclosed to Client any litigation pending against Consultant related to its performance of duties as an investment advisor and any pending investigation of Consultant by the Securities and Exchange Commission or any other regulatory authority related to its performance of duties as an investment advisor. Failure to comply with the terms of this provision shall constitute a material breach of this Agreement.
- 9.4.0** Consultant further represents that it is authorized to enter into this Agreement and any subsequent amendments hereto, and when so executed by both parties, it will be bound in accordance with its terms.

- 9.5.0** Consultant shall keep, maintain, and make available all books, records, and documents related to the services performed under this Agreement for the audit and examination by authorized personnel of the Client upon prior written notice and at reasonable times and places during the term of this Agreement, and for six (6) years thereafter.

PART X.

ENTIRE AGREEMENT CLAUSE

The Contract Documents, as defined in paragraph XI. below, set forth the entire understanding of the parties with respect to the subject matter hereof and incorporate and merge any and all previous agreements, understandings and communications, oral or written, with respect to the subject matter hereof.

PART XI.

CONTRACT DOCUMENTS AND PRECEDENCE

- 11.1.0** The final contract between the SCDCC and the Consultant will incorporate the specifications, terms and conditions of the RFP, any written clarifications or changes made to this RFP, the offer contained in the proposal, and any additional contractual terms and conditions agreed to mutually and in writing by the parties. In the event of any dispute between the parties with regard to the meaning of these documents, the order of precedence shall be, with the lower numbered documents taking precedence over higher numbered items, as follows:

- (1) The Contractual Agreement entered into with the successful offeror;
- (2) The RFP dated July 27, 2006, which is incorporated herein by reference;
- (3) Consultant's Proposal which is incorporated herein by reference.

- 11.2.0** This Agreement has been extensively and fully negotiated between the Consultant and Client. Therefore, the provisions of the Contractual Agreement (11.1.0(1)) entered into with the successful offeror shall be interpreted fairly and without regard to the identity of any party drafting any provision at issue.

PART XII.

CONTRACT REQUIREMENTS

12.1.0 **Choice-of-Law**

This Agreement shall be considered to be a South Carolina contract and shall be deemed to have been made in Richland County, South Carolina, regardless of the order in which the signature of the parties shall be affixed hereto. This Agreement and any dispute, claim, controversy, rights and liabilities of the parties relating to this

Agreement shall, in all respects, be determined, interpreted, construed, enforced and governed by and in accordance with the laws of the State of South Carolina.

12.2.0 Choice of Forum

The Consultant and Client consent to the exclusive jurisdiction of both the United States District Court for the District of South Carolina and the courts of the State of South Carolina. Further, the Consultant and Client agree that any suit, action or proceeding arising out of or relating to this Agreement shall be instituted only in the courts of the State of South Carolina or the United States District Court for the District of South Carolina, United States of America. Each party waives any objection it may have now or hereafter to laying of the venue of any such suit, action or proceeding within the State of South Carolina.

12.2.1 The State of South Carolina expressly reserves its sovereign immunity and its immunity under the Eleventh Amendment of the United States Constitution.

12.3.0 Non-Assignment

This Agreement may not be assigned by either party except with the prior written consent of the other party.

12.4.0 Severability

In the event that a court of competent jurisdiction considers any provision of this Agreement ineffective, unenforceable, void, voidable, illegal or invalid for any reason, such provision shall be of no force and no effect only to the extent that it is so declared ineffective, unenforceable, void, voidable, illegal or invalid. All of the provisions of this Agreement not specifically found to be so deficient shall remain in full force and effect.

12.5.0 Force Majeure

If either party is rendered unable by force majeure, or any other cause of any kind not reasonably within its control, wholly or in part, to perform or comply with any obligation or condition of this Agreement, upon such party's giving timely notice and reasonably full particulars to the other party such obligation or condition shall be suspended during the continuance of the inability so caused and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period. The cause of the suspension shall be remedied so far as possible with reasonable dispatch.

12.6.0 Indemnification

Consultant shall indemnify and hold harmless Client and its officers and employees and their respective successors and assigns (collectively, the "Client Parties") for any liabilities, losses, damages, attorneys' fees, costs, or expenses (including, without limitation, costs of investigation) which the Client Parties may incur in connection with this Agreement, or the transactions contemplated hereby, arising from or relating to Consultant's breach of its obligations under this Agreement, negligence,

misconduct, bad faith, or fraud. Client's or Client Parties' rights hereunder are cumulative to any rights it may otherwise have in law or equity.

12.7.0 Upon receipt by Client or any Client Parties of any claim with respect to which it may be entitled to indemnification under this section, the Client shall promptly notify Consultant in writing thereof, enclosing a copy of all papers, if any, served; provided, however, Client's failure or delay in so notifying Consultant shall not affect Consultant's liability hereunder.

12.8.0 Consultant shall not settle any claim without the prior written consent of the Client, which consent shall not be unreasonably withheld.

12.9.0 Affirmative Action (Anti-Discrimination)

Consultant shall comply with all applicable federal and state requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard to or discrimination by reason of race, color, religion, sex, national origin or physical handicap.

12.10.0 Compliance With State Law and Industry Standards

During the term of this Agreement, Consultant shall comply with all applicable provisions of laws, codes, ordinances, rules and regulations, tariffs, and industry standards.

12.11.0 Maintain Licenses and Disclosure of Changes to Registrations

During the term of this Agreement, the Consultant shall have and maintain, in good standing, all licenses (including professional licenses, if any), permits, and inspections, including any related fees for any such licenses, permits and/or inspections, required by any state, county, city or other government entity or unit to accomplish the work specified in this Agreement.

12.12.0 Notwithstanding any other provision of this Agreement, Consultant shall disclose to Client within one (1) business day:

- (1) Any known investigation by federal or state agencies or self-regulatory organization of Consultant;
- (2) Any known complaint against Consultant filed with a federal or state agency or self-regulatory organization;
- (3) Any known proceeding naming Consultant before any federal or state agency or self-regulatory organization; and
- (4) Any fine, penalty, censure or other disciplinary action taken against Consultant.

12.13.0 Corporate Change

The Consultant shall notify the Client of any material changes in the Consultant's structure or personnel within ten (10) Business Days of the change. The Consultant shall notify the Client of any material changes in the ownership of Consultant or any entity which has a material ownership interest in the Consultant within ten (10) Business Days of the change. A change of thirty percent (30%) or more in ownership is considered a material change for purposes of this provision.

12.14.0 Drug-Free Workplace

In accordance with S.C. Code Ann. Section 44-107-60, as amended, this Agreement is subject to immediate termination, suspension of payment, or both, if the Consultant fails to comply with the terms of the Drug Free Workplace Act, codified at S.C. Code Ann. Sections 44-107-10, *et seq.*

PART XIII.

WAIVER

13.1.0 No waiver by either party of any provision of this Agreement shall constitute a subsequent waiver of the same or any other provision.

13.2.0 Neither the failure of the Client at any time to require performance by the Consultant of any provision of this Agreement, nor the continued payment of Consultant by the Client, shall in any way effect the Client's right to enforce any provision of this Agreement. The Client's or Consultant's waiver of any breach of any provision of this Agreement shall not be construed or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

PART XIV.

SIGNATURES

The signatories hereunder warrant and declare that they are duly authorized to execute this Agreement by virtue of their position and title and are signing on behalf of their respective entity by virtue and strength thereof, or of a resolution duly considered and passed by a duly authorized and constituted authority or body of their respective entity. Further, it is stipulated and agreed by the parties that this Agreement shall be binding upon their respective entity, officers, employees, agents, affiliated organizations, shareholders, and the heirs, successors and assigns of each.

(Consulting Firm Name)

BY: _____

Title:

Date: _____

South Carolina Budget and Control Board

BY: _____

Peggy G. Boykin, CPA

Title: Chairman, South Carolina Deferred Compensation Commission

Date: _____

ATTACHMENT A

ATTACHMENT B